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Guiding the Perplexed

on the Permissibility of Killing the Prisoners

Abu Khubayb al Muwahhid

(May Allah free him from American prison)

[After the recent incident concerning the slaughter of the Jew, Nick Berg, and the subsequent escalation in the questioning of the permissibility of killing prisoners, I sought to summarise and translate parts of "*Hidaayat al-Hayaaraa fi Jawaaz Qatl il-Asaaraa*" for the *Mujaahid* Scholar Yoosuf bin Saalih al-'Uyayri, may Allah enclose him in his wide mercy.

The research paper was produced after the Mujaahideen in Chechnya slaughtered seven captured Russian soldiers. Thereafter Khattab (Saamir as-Swaylim) contacted Shaykh Yoosuf requesting a paper to conclude disputes and clarify the matter. Shaykh Yoosuf fulfilled the request. May Allah gather them together under the shade of His Throne. Ameen].

To proceed:

Islaam came with a set of revealed legislations, delivered from above seven-heavens. In this legislation, the Legislator - subhaanah - decreed sufficiently all the matters that will come to affect the ummah. Thus Allah says, "And we revealed the book, clarifying (tibyaanan) everything".

From amongst those matters is this issue of prisoners. This issue is not new, for it was faced by the Prophet *sallallahu 'alayhi wa aalihi wa salam*, and his companions and the khulafaa` thereafter, and in their actions and treatment is the greatest of guidance and wisdom for the one who seeks it.

The question is: What is the ruling on killing prisoners, and how do we reply to those who say that prisoners in Islaam are not killed but rather are either freed or ransomed, due to His saying, "Thereafter (is the time) either for generosity (i.e. free them without ransom), or ransom (according to what benefits Islaam"[47:4]?

Answer: On this issue are five mathaahib (opinions):

<u>The first</u> is that a mushrik prisoner must be killed. No amnesty may be granted to him, nor can he be ransomed. And the ayah above is abrogated by His saying, "It is not for a Prophet that he should have prisoners of war (and free them with ransom) until he had made a great slaughter (among his enemies) in the land."[8:67] and; "Then when the Sacred Months (the 1st, 7th, 11th, and 12th months of the Islaamic calendar) have passed, then kill the Mushrikoon wherever you find them"[9:5] and; "Punish them severely in order to disperse those who are behind them, so that they may learn a lesson" [8:57].This is the view held by Qataadah, ad-Dahaak, as-Suddi, Ibn

Jurayj and Ibn 'Abbaas and many of the scholars of Koofa.

But this view is contradictory to what is most correct as will become clear, bi ithn illah.

The second is that all kufaar mushrikeen and the People of the Book (i.e., Jews and Christians) are to be killed. They may not be granted amnesty, nor can they be ransomed.

This view is more wide-ranging than the one before, and is narrated as the view of Qataadah and Mujaahid who said: "If a mushrik is captured, it is not permissible to grant him amnesty or to ransom him so that he may return to the mushrikeen, and it is not permissible except for the woman as she is not killed, and the (aayah) is abrogated by His saying, "Then when the Sacred Months (the 1st, 7th, 11th, and 12th months of the Islaamic calendar) have passed, then kill the Mushrikoon wherever you find them" [9:5]. This soorah was the last to be revealed, thus it is obligatory to kill every mushrik, except the one for whom there is evidence to absolve them of this, such as the women and children, and the ones from whom jizyah is taken. This is the popular view of the mathhab of Abu Haneefah, and the logic behind it is, that by not killing such individuals, it is possible that they return to fight Islaam.

'Abdurazzaaq (in his Musannaf) mentioned: Ma'mar informed us, from Qataadah, "Thereafter (is the time) either for generosity (i.e. free them without ransom), or ransom (according to what benefits Islaam" [47:4].He said: It was abrogated by: "Punish them severely in order to disperse those who are behind them, so that they may learn a lesson" [8:57].And Mujaahid said: It was abrogated by: "Then when the Sacred Months (the 1st, 7th, 11th, and 12th months of the Islaamic calendar) have passed, then kill the Mushrikoon wherever you find them" [9:5], and this is the saying of al-Hakam.

The third it is not permissible in the case of a prisoner except to grant him amnesty or to ransom him, due to His saying, *subhaanahu wa ta'ala*, "Thereafter (is the time) either for generosity (i.e. free them without ransom), or ransom (according to what benefits Islaam" [47:4]; and they said it was the last of what was revealed unto the Messenger, sallallahu 'alayhi wa aalihi wa salam regarding the prisoners, and it provides two choices: amnesty or ransom, and it is not permissible to go beyond that. They also stated that this aayah abrogates those before it. (This saying) is narrated by ad-Dahaak and others.

ath-Thawri narrates from Juwaybir, from ad-Dahaak, "Then when the Sacred Months (the 1st, 7th, 11th, and 12th months of the Islaamic calendar) have passed, then kill the Mushrikoon wherever you find them" [9:5] , he said: It was abrogated by "Thereafter (is the time) either for generosity (i.e. free them without ransom), or ransom (according to what benefits Islaam" [47:4]. Ibn al-Mubaarak narrated from Ibn Jurayj from 'Ataa` who said: "Thereafter (is the time) either for generosity (i.e. free them without ransom), or ransom (according to what benefits Islaam),"so the mushrik is not killed, but rather is either granted amnesty or ransomed, as Allah says.

al-Ash'at said: al-Hasan (al-Basri) used to hate{*1*} for the prisoner to be killed, and would recite, "Thereafter (is the time) either for generosity (i.e. free them without ransom), or ransom (according to what benefits Islaam)". He claimed that it is not for the Imaam to kill the prisoner if he captures him, but has three choices: either to grant amnesty, ransom or enslave.

This view is refuted on two folds: Firstly, due to the what the Messenger *sallallahu 'alayhi wa aalihi wa salam* did, even after the revelation of this ayah and secondly, if we were to accept that this saying is strong, then it is not an evidence against us, as the war has not laid down its burden,

and the aayah mentions that as a condition, "until the war lays down its burden." [47:4]{*2*}. So there is no evidence possessed by these people.

The fourth is that amnesty and ransom are possible only after the killing of a large number, due to His saying: "It is not for a Prophet that he should have prisoners of war (and free them with ransom) until he had made a great slaughter (among his enemies) in the land."[8:67] So if he was imprisoned after that, then the Imaam has a choice to kill him or (do) otherwise. This is the view of Sa'eed bin Jubayr.

The fifth is that the Imaam or someone acting on his behalf, can choose between killing, amnesty, ransom or enslaving the prisoner. This is the view of Maalik, ash-Shafi'ee, Ahmad, and the majority of scholars. It is the saying supported by the evidences, and does not cause them to (appear) contradictory, and we do not need to resort to accepting the statement regarding abrogation in this case.

al-Imaam al-Qurtubi says in explanation of this aayah that there are five views [as mentioned above], and added: "The ayaat are decisive (muhkama) and the Imaam has a choice in every case. This is narrated by 'Ali bin Abi Talhah from Ibn 'Abbaas, and it was said by many scholars from them Ibn 'Umar, al-Hasan, 'Ataa` and it is the mathhab of Maalik, ash-Shafi'ee, ath-Thawri, al-Awzaa'i and Abi 'Ubayd and other than them, and it is the choice (of mine). For the Messenger, *sallallahu 'alayhi wa salam*, the righteous khulafaa` did all that. The Messenger, *sallallahu 'alayhi wa salam* killed 'Uqbah bin Abi Mu'eet and an-Nidr bin al-Haarith on the day of Badr, and ransomed the rest of the captives. He granted amnesty to Thumaama bin Athaal al-Hanafi, whilst he was a prisoner, and took from Salamah bin al-Awka' a female-slave, and freed by her some of the Muslims. A group of the people of Makkah entered on his (territory), so he took them, *sallallahu 'alayhi wa salam* and granted them amnesty. He also granted amnesty to the slaves of (the tribe of) Hawaazin and all this is established from the Saheeh. This view is narrated by the people of Madeenah, ash-Shafi'ee, Abi 'Ubayd, and at-Tahaawi stated that it is a mathhab of Abi Haneefah, but what was mentioned earlier is what is more known (about his view) on this matter, and with Allah *'azza wa jall* lies Allah success".

al-Imaam Ibn Taymiyyah says in al-Fataawa [34/116]: "The Imaam has a choice with the prisoners to kill, enslave, ransom or grant amnesty. So it is up to him to decide what is better for the benefit of the Muslims."

al-Imaam Ibn al-Qayyim says in Zaad al-Ma'aad [3/109]: "He - *sallallahu 'alayhi wa salam* - used to grant amnesty to some, and kill some, and ransom some for money and others for other prisoners of the Muslims, and he did all that in accordance with the benefit of the Muslims," and then he mentioned the evidences for each.

al'Atheem Abaadi said in 'Awn al-Ma'bood [7/247-248]: "Chapter: Killing the prisoner and he is not offered Islaam. The Prophet *sallallahu 'alayhi wa salam* granted security (when he entered Makkah) to all except four and two women and he said regarding them, 'Kill them, even if they were holding unto the curtains of the Ka'bah', (they were) 'Ikrimah bin Abi Jahl, 'Abdullah bin Khatal, Muqees bin Subaabah and 'Abdullah bin Sa'd bin Abi Sarh".

al-Imaam as-Sarkhasi said in al-Mabsoot [10/137-138]: "And I asked him - Abu Haneefah - regarding a man who captures a man from the enemies, is it (permissible) for him to kill him, or must he bring him to the Imaam? He said: Whichever of those is good. And when Ummayah bin Khalf was killed after he was captured at Badr, the Messenger *sallallahu 'alayhi wa salam* did not

admonish those who killed him, but if he brings him to the Imaam it would be better, as it is a preservation of the significance (hurmah) of the Imaam, but the first (option) is better in showing harshness on the mushrikeen and weakening of them. So it is incumbent on him to choose what is better and more benefitial for the Muslims."

See also: al-Jasaas in Ahkaam al-Quraan [5/268-270]; Ibn Katheer in his Tafseer [4/174]; Ibn Qudaamah in al-Mughni [9/179-180]; Ibn Hajr in Fath al-Baari [6/151-152], as-Suyooti in al-Ashbaah wan-Nathaa`ir [1/121], al-Kaasaani in Badaa`i as-Sanaa`i [7/11]; ash-Shawkaani in Nayl al-Awtaar [8/145-147], and al-Mubaarakpoori in Tuhfat al-Ahwathi [5/158].

And Allah Knows Best and may Allah send His peace and blessings upon Muhammed, and upon whoever follows Him until the Day of Judgement.

Footnotes:
{1} As mentioned by al-Imaam Ibn Taymiyyah in Majmoo’ al-Fataawa, and Abu Ishaaq ash-Shaatibi in al-I’tisaam when al-ikraah is mentioned in the terminology of the scholars of the Salaf, it implies prohibition (tahreem).

{2} Check the ayah fully, to understand.